UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA  CLEGACY AT WESTWOOD, LLC,  V.  PLAINTIFF(S)  ORDER RE REQUEST TO PROCEED IN FORMA PAUPERIS JS-6  IS ORDERED that the Request to Proceed In Forma Pauperis is hereby GRANTED.  Date  United States Magistrate Judge  IS RECOMMENDED that the Request to Proceed In Forma Pauperis be DENIED for the following reason(s):    District Court lacks jurisdiction   Legally and/or factually patently frivolous   Minimunity as to   Minimunity	Case 2:15-cv-04491-JAK-PLA Document (	6 Filed 06/17/15 Page 1 of 4 Page ID #:26	6
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	73 (12/14) ORDER RE REQUEST TO P	ROCEED IN FORMA PAUPERIS	

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9	T-C LEGACY AT WESTWOOD, LLC,				
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11	Plaintiff	CV 15-	4491-JAK (P	LAx)	
12	v.				
13	RUSTY NEAL, et al.,	ODDED DE	MANDING CA	SE TO	
14			ATE COURT	ISE TO	
15	Defendant(s).				
16					
17	The Court sua sponte REMANDS this ac	tion to the Californ	ia Superior Cou	ırt for the	
18	County of Los Angeles for lack of su	bject matter jurisdi	ction, as set fort	h below.	
19	"The right of removal is entirely a creatur	e of statute and 'a s	uit commenced	in a state	
20	court must remain there until cause is shown for	its transfer under s	ome act of Con	gress.'"	
21	Syngenta Crop Protection, Inc. v. Henson, 537 U	.S. 28, 32 (2002) (qu	oting <u>Great No</u>	orthern R. Co.	
22	v. Alexander, 246 U.S. 276, 280 (1918)). Where Congress has acted to create a right of removal,				
23	those statutes are strictly construed against removal jurisdiction. <u>Id.</u> ; <u>Nevada v. Bank of America</u>				
24	Corp., 672 F.3d 661, 667 (9th Cir. 2012); Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).				
25	Unless otherwise expressly provided by Congress, a defendant may remove "any civil				
26	action brought in a State court of which the district courts of the United States have original				
27	jurisdiction." 28 U.S.C. § 1441(a); <u>Dennis v. Hart</u> , 724 F.3d 1249, 1252 (9th Cir. 2013). The				
28	removing defendant bears the burden of establish	ning federal jurisdic	tion. <u>Abrego A</u>	<u>brego v.</u>	

Dow Chemical Co., 443 F.3d 676, 682 (9th Cir. 2006); Gaus, 980 F.2d at 566-67. "Under the plain terms of § 1441(a), in order properly to remove [an] action pursuant to that provision, [the removing defendant] must demonstrate that original subject-matter jurisdiction lies in the federal courts." Syngenta Crop Protection, 537 U.S. at 33. Failure to do so requires that the case be remanded, as "[s]ubject matter jurisdiction may not be waived, and . . . the district court must remand if it lacks jurisdiction." Kelton Arms Condo. Owners Ass'n v. Homestead Ins. Co., 346 F.3d 1190, 1192 (9th Cir. 2003). "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c). It is "elementary that the subject matter jurisdiction of the district court is not a waivable matter and may be raised at anytime by one of the parties, by motion or in the responsive pleadings, or *sua sponte* by the trial or reviewing court." Emrich v. Touche Ross & Co., 846 F.2d 1190, 1194 n.2 (9th Cir. 1988).

From a review of the Notice of Removal and the state court records provided, it is evident that the Court lacks subject matter jurisdiction over the instant case, for the following reasons.

- ✓ No basis for federal question jurisdiction has been identified:
  - ✓ The Complaint does not include any claim "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.
  - Removing defendant(s) asserts that the affirmative defenses at issue give rise to federal question jurisdiction, but "the existence of federal jurisdiction depends solely on the plaintiff's claims for relief and not on anticipated defenses to those claims." ARCO Envtl. Remediation, L.L.C. v. Dept. of Health and Envtl. Quality, 213 F.3d 1108, 1113 (9th Cir. 2000). An "affirmative defense based on federal law" does not "render[] an action brought in state court removable." Berg v. Leason, 32 F.3d 422, 426 (9th Cir. 1994). A "case may not be removed to federal court on the basis of a federal defense . . . even if the defense is anticipated in the plaintiff's complaint, and even if both parties admit that the defense is the only question truly at issue in the case." Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 14 (1983).
  - The underlying action is an unlawful detainer proceeding, arising under and governed by the laws of the State of California.

1	☑ Diversity jurisdiction is lacking:
2	Every defendant is not alleged to be diverse from every plaintiff. 28 U.S.C. §
3	1332(a).
4 5	The Complaint does not allege damages in excess of \$75,000, and removing defendant(s) has not plausibly alleged that the amount in controversy requirement
6	has been met. <u>Id.</u> ; <u>see Dart Cherokee Basin Operating Co., LLC v. Owens,</u> U.S, 135 S.Ct. 547, 554 (2014).
7	The underlying unlawful detainer action is a limited civil action that does not
8	exceed \$25,000.
9	IT IS THEREFORE ORDERED that this matter be, and hereby is, REMANDED to the Superior
10	Court of California listed above, for lack of subject matter jurisdiction.
11	IT IS SO ORDERED.
12	Date: June 17, 2015  John A. Kronstadt
14	United States District Judge
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ORDER REMANDING CASE TO STATE COURT

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